IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3276 of 2004
with
CIVIL APPLICATION No. 10123 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PRABHAVATIBEN MIRAJIRAO KANDE

Versus

VASANTRAO NARAYANRAO KANDE

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Appearance:
1. First Appeal No. 3276 of 2004
MR KV SHELAT for Appellant
MR P A MEHD for Respondent

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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 09/05/2005

ORAL JUDGEMENT

ADMITTED. Mr.P.A.Mehd, learned advocate appears and waives service of notice of admission on behalf of

the respondent.

2. Having heard learned advocates appearing for the parties, according to this Court, as the matter is required to be remanded for deciding afresh, by the consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today.

3. Instant appeal u/s 96 of the Code of Civil Procedure is directed against the judgement and decree dated 29.10.2004 rendered in Civil Suit No. 6296 of 1986 by the learned Judge, Court No.18, City Civil Court, Ahmedabad, by which the Suit filed by the appellants against the respondent for permanent injunction, restraining the respondent from transferring the subject matter of the suit property, came to be dismissed with no order as to costs.

4. At the time of hearing of this Appeal, Mr.K.V.Shelat, learned advocate of the appellants has drawn the attention of this Court to the common order dated 31.12.2001 passed in Partition Suit No.5138 of 1986 and Civil Suit No. 5131 of 1986, filed by the respondent against the appellants, by which the learned Additional Principal Judge has passed the following order:

> "Heard. Civil Suit No. 5131 of 1986, Partition Suit No. 5138 of 1986 (pending before the Court No.4) and Civil Suits No. 6302 of 1987 and 4476 of 1986 (pending before the Court No.10) be transferred to Court No.22, as these matters are cognate to Civil Suit No. 6296 of 1986, which is pending before the Court No.22."

Referring to the above quoted order, it is submitted by him that so far as Civil Suit No.5131 of 1986 and Partition Suit No. 5138 of 1986 are concerned, both are filed by the respondent against the appellants, whereas Civil Suit No. 6302 of 1987 and 4476 of 1986 are filed by the appellants against the respondent. As per the said order, all the aforementioned four Suits have been transferred to Court No.22 as these matters are cognate to Civil Suit No. 6296 of 1986, which is pending before the Court No.22. He further urged that since all the 5 Suits have to be tried together, the learned trial Judge has committed error in separating Civil Suit No. 6296 of 1986 and tried the same separately and delivered the judgement which is impugned under appeal. He further submitted that all the aforesaid 4 Civil Suits are still pending and awaited for trial. He, therefore, urged that the impugned judgement and decree is required to be

quashed and set aside by allowing this appeal and thereby remanding the matter for deciding afresh along with those 4 Suits, which are still pending and awaited for trial.

5. Mr. P.A.Mehd, learned advocate of the respondent urged that the appellants ought to have pointed out this fact before conducting the Civil Suit No. 6296 of 1986 and by not pointing out the fact he allowed the Suits to be tried separately and, therefore, impugned judgement and decree is in accordance with law which is not required to be quashed and set aside by this Court. He, therefore, urged that the appeal lacks merit and deserves to be dismissed.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the order dated 31.12.2001, recorded in Partition Suit No.5138 of 1986 and Civil Suit No. 5131 of 1986, filed by the respondent against the appellants and Civil Suit No. 6302 of 1987 and 4476 of 1986 filed by the appellants against the respondent, which came to be transferred to Court No.22 as these matters are cognate to Civil Suit No.6296 of 1986, which is pending before Court No.22. If this is the order passed by the learned Additional Principal Judge, then Court No.22 which has conducted Civil Suit No. 6296 of 1986, ought not to have decided the said Suit by separating other 4 Civil Suits when the litigating parties are the same and the subject matter of the Suits is with regard to various properties.

7. In aforesaid view of the matter, according to this Court, the learned trial Judge ought to have decided the 5 Suits by consolidating the same.

8. It is pointed out by the learned advocates appearing for the parties that in those 4 Suits, evidence has not still begin. In that view of the matter the impugned judgement and decree deserves to be quashed and set aside by allowing this appeal and by remanding the Civil Suit No.6296 of 1986 for deciding afresh after consolidating with 4 other Civil Suits, to which the reference is made earlier.

9. For the foregoing reasons, the appeal succeeds and accordingly it is allowed. The impugned judgement and decree is hereby quashed and set aside. The matter is remanded to the trial Court for deciding afresh. The learned trial Judge shall decide Civil Suit No. 6296 of 1986 afresh after consolidating it with Civil Suit No. 5131 of 1986, Partition Suit No. 5138 of 1986, Civil

Suit No. 6302 of 1987 and Civil Suit No. 4476 of 1986.

10. It is hoped that since all the Suits are of 1986 and 1987, the learned trial Judge shall give expeditious hearing by giving top priority to the same and decide the same preferably on or before 30th April, 2006.

11. Since the appeal is allowed, Civil Application No. 10123 of 2004, wherein, notice has been issued and by way of ad interim relief opponent was directed to maintain status quo as existed on the date of the said order with respect to the 3 storey house No. 2675 of Survey No. 3151, Bukhara's Moholla, Opp. Parsi Agiyari, Khamasa Gate, Raikhad, Ahmedabad till then, shall remain operative till final decision of all the Suits.

(A.M.Kapadia,J)

Jayanti*